



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 036-17

3617 STATE STREET

REVOCATION OF STOREFRONT COLLECTIVE DISPENSARY PERMIT

JUNE 15, 2017

NOTICE OF DECISION TO REVOKE THE STOREFRONT COLLECTIVE DISPENSARY PERMIT ISSUED TO SANTA BARBARA PATIENTS COLLECTIVE AND HEALING CENTER, 3617 STATE STREET, APN: 051-051-005, C-P/SD-2 RESTRICTED COMMERCIAL/SPECIAL DISTRICT 2 ("UPPER STATE STREET AREA") ZONES, GENERAL PLAN DESIGNATION: COMMERCIAL/MEDIUM HIGH RESIDENTIAL (MST2014-00438)

WHEREAS, on June 4, 2015, the Planning Commission held a public hearing and conditionally issued a Medical Marijuana Storefront Collective Dispensary Permit to Santa Barbara Patients Collective and Health Center (SBPCHC) with Conditions that needed to be satisfied prior to commencement of operations (Exhibit 8 to City Attorney Brief).

WHEREAS, on July 30, 2015, a building permit application was submitted to the City for an interior remodel and bathroom upgrade to meet ADA compliance (Exhibit 9 to City Attorney Brief). Said application included a revised Operations Plan (the First Revised Operations Plan) that was intended to satisfy the Conditions of the Medical Marijuana Storefront Collective Dispensary Permit issued by the Planning Commission.

WHEREAS, on April 4, 2016, another revised Operations Plan (the Second Revised Operations Plan) was submitted as part of the response to City plan check comments regarding the First Revised Operations Plan (Bates stamp 000482). The Second Revised Operations Plan included additional changes beyond those that were required by the Planning Commission conditions.

WHEREAS, on July 19, 2016, pursuant to the requirements of Santa Barbara Municipal Code (SBMC) §28.80.120.B, the City Attorney's Office issued a Notice of Hearing and Intent to Suspend or Revoke Application to the Management Members of SBPCHC as identified in the Storefront Collective Dispensary Permit, notifying them that a hearing would be scheduled to request the Staff Hearing Officer to suspend or revoke the Storefront Collective Dispensary Permit based on the change in ownership or control of the Storefront Collective Dispensary Permit and misrepresentations in the approved application (Exhibit 18 of City Attorney Brief).

WHEREAS, a hearing before the Staff Hearing Officer was scheduled for May 24, 2017, and continued by stipulation of the parties to May 31, 2017 (Bates stamp 000485).

WHEREAS, the parties stipulated to the facts and evidence contained in Exhibits 1-25 to the City Attorney's brief dated May 25, 2017.

WHEREAS, the parties stipulated to the facts and evidence in Fernando Velez, Jr. brief, dated May 25, 2017, with an objection to Exhibit B raised by Luis Esparza, Attorney for Matt Armor and Greg McGee.

WHEREAS, the parties stipulated to the facts and evidence in Luis Esparza's brief dated May 25, 2017.

WHEREAS, the Staff Hearing Officer held the required public hearing to receive evidence, take testimony, and hear public comment on the City Attorney's Notice of Hearing and Intent to Suspend or Revoke the Storefront Collective Dispensary Permit.

WHEREAS, the following persons were present at the hearing:

Susan Reardon, Staff Hearing Officer

Scott Vincent, Assistant City Attorney, Council to Staff Hearing Officer

Tava Ostrenger, Assistant City Attorney, Council to Community Development Department

Fernando Velez, Attorney for Joseph Allen

Joseph Allen, former Management Member of SBPCHC and CEO of Apothecary of Santa Barbara, Inc.

Luis Esparza, Attorney for Matt Armor and Greg McGee, Management Members of Santa Barbara Patients Collective and Healing Center (SBPCHC)

WHEREAS, one member of the public, Mike Jordan, appeared to speak during public comment in regard to the revocation, and the following Exhibits were presented for the record:

1. City Attorney's Hearing Brief Requesting Revocation of Approved Marijuana Dispensary Application with Exhibits 1-25, May 25, 2017.
2. Letter in Brief of Santa Barbara Patients Collective & Healing Center from Luis Esparza, Attorney, with Exhibits 1-2, May 25, 2017.
3. 3617 State Street Medical Marijuana Dispensary Application from Fernando Velez, Jr., Attorney, with Exhibits A-C, May 25, 2017.
4. Supplemental Information letter from Luis Esparza, Attorney, June 7, 2017.
5. Supplemental Request for Information letter from Fernando Velez, Jr., Attorney, June 7, 2017.
6. Letter from Joseph Allen, June 7, 2017.
7. Email correspondence received in support of the revocation:
 - a. Bill Schaal, Santa Barbara
 - b. Dennis Hanson, Santa Barbara

NOW, THEREFORE BE IT RESOLVED that the City Staff Hearing Officer, after reviewing the written documents submitted by all parties and SBMC Chapter 28.80, as well as, listening to the testimony provided on May 31, 2017, makes the following findings and determinations:

I. FINDINGS OF FACT

1. On September 4, 2014, Joseph Allen submitted a Master Application and a Medical Marijuana Storefront Collective Dispensary Permit Application (the Application) for a Storefront Collective Dispensary Permit to be located at 3617 State Street (Exhibit 1 to City Attorney Brief).
2. On April 15, 2015, the Staff Hearing Officer issued a Storefront Collective Dispensary Permit subject to conditions. (Bates stamp 000210 - 000219).
3. On June 4, 2015, the Planning Commission issued a Storefront Collective Dispensary Permit subject to conditions. (Bates stamp 0002295 – 000300).
4. Presented to the Planning Commission as part of the application materials for the June 4, 2015, Staff Hearing Officer permit suspension hearing was a Medical Marijuana Storefront Collective Dispensary Permit Application (Revised, Corrected and Expanded Final – April 25). (Bates Stamp 000222 – 000252).
5. The application materials presented to the Planning Commission indicates Joseph Allen, Matt Armor, and Greg McGee Jr. are the Management Members of SBPCHC (Bates stamp 000231).
6. The Application indicates that the SBPCHC is an unincorporated non-profit association (Bates stamp 000232).
7. The Application includes statements, signed under penalty of perjury, by Matt Armor, Greg McGee, and Joseph Allen that they have personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Joseph Allen (Bates stamp 000049-000051).
8. Statements included in the Application indicate that SBPCHC will implement the requirements of SBMC Chapter 28.80.
9. To the extent that Joseph Allen, Matt Armor, or Greg McGee are individually identified within the Application, they are identified as the applicant, Management Member, Emergency Contact, and Agent for Service of Process (Bates stamp 000002, 000009, 000010, and 000011).

10. The Application filed on September 4, 2014, states *“SBPCHC will not transfer ownership or control of our Storefront Collective Dispensary or attempt to transfer our Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.”* (Bates stamp 000024).
11. I find that the signed statements, under the penalty of perjury, by Matt Armor, Greg McGee, and Joseph Allen that they have personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Joseph Allen (Bates stamp 000049-000051) and the statement in the Application that *“SBPCHC will not transfer ownership or control of our Storefront Collective Dispensary or attempt to transfer our Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.”* (Bates stamp 000024) when taken together indicate that the Management Members of SBPCHC were aware of the process required for a transfer of ownership or control of the Storefront Collective Dispensary Permit.
12. On December 14, 2015, Articles of Incorporation for Santa Barbara Patients Collective and Healing Center, Inc. (the Corporation) were filed with the California Secretary of State. The mailing address of the Corporation is indicated as 3617 State Street. The Articles of Incorporation are signed by Joseph D. Allen.
13. Joseph D. Allen wrote a letter dated March 23, 2016, to Tony Boughman, the City planner who is processing the Dispensary Permit, identifying Eric Anderson and Mary Bock as his authorized agents. In this letter, Mr. Allen disavows any other agents who might have acted on his behalf in the past (Bates stamp 000310).
14. On March 29, 2016, Mary Bock filed a Statement of Information for the Corporation with the California Secretary of State identifying Joseph Allen as Chief Executive Officer and Chief Financial Officer and Eric Anderson as Secretary of the Corporation. The mailing address of the Corporation is indicated as 3617 State Street (Bates stamp 000312).
15. On April 4, 2016, a revised Application was submitted in conjunction with the plans submitted for a building permit responding to Planning Commission Resolution 009-15 [Bates stamp 000482 (for purposes of identified submittal date) and 000314-000351]. This revised Application, not only responded to previous plan check comments, but also changed the name of the dispensary from SBPCHC to Apothecary of Santa Barbara, Inc.; indicated

that Apothecary of Santa Barbara has incorporated as a Non-Profit Mutual Benefit Corporation; and, removed Matt Armor and Greg McGee as Management Members and replaced them with Eric Anderson and Lorenzo Diaz (Bates stamp 000315, 000330, and 000329).

16. On April 6, 2016, Joseph Allen sent an email to Tony Boughman to confirm that Mr. Boughman received the revised project plans and amended Operations Plan and to advise Mr. Boughman to be very careful not to give or receive information about the project to anyone other than himself, Eric Anderson, or Mary Bock (Bates stamp 000353).
17. Joseph Allen wrote a letter dated April 6, 2016 to Matt Armor, Greg McGee Jr., and Patrick Fourmy voluntarily resigning from SBPCHC as an Associate of the Collective and as Agent for Service of Process (Bates stamp 000355).
18. On April 14, 2016, Joseph Allen sent an email to Tony Boughman to remind Mr. Boughman to only deal with him, Mary Bock, and Eric Anderson and telling Mr. Boughman that Matt Armor is not his agent anymore (Bates stamp 000357).
19. On July 19, 2016, Tava Ostrenger, Assistant City Attorney, issued a *Notice of Hearing and Intent to Suspend or Revoke Application* given Joseph Allen's change in collective entities, attempt to remove Matt Armor and Greg McGee as permittees and management members, the addition of Eric Anderson as a management member, and the addition of a grow site (Bates stamp 000369-000370).
20. On December 21, 2016, Matt Armor and Greg McGee signed a notarized affidavit stating that they are still management members of SBPCHC and that all further communications regarding the permit for SBPCHC be directed to either Matt Armor or Greg McGee (Bates stamp 000466-000467).
21. On page 1 and 2 of Fernando Velez Jr. letter dated May 25, 2017, Mr. Velez indicates Joseph Allen concedes that he submitted the amendments (additional grow location, change in the management members, and change in the entities) to the permit application without prior approval by the Staff Hearing Officer.
22. Santa Barbara Municipal Code (SBMC) §28.80.130. A states: *A permittee shall not transfer ownership or control of a Storefront Collective Dispensary or attempt to transfer a Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.*

23. SBMC §28.80.130.D states: *Any attempt to transfer a Storefront Collective Dispensary permit either directly or indirectly in violation of this Chapter is declared void, and the permit shall be deemed revoked.*

II. CONCLUSIONS OF LAW

1. Joseph Allen was the Applicant for SBPCHC as defined in SBMC § 28.80.020. Joseph Allen signed the Master Application as the applicant and provided information to the City while acting as the applicant.
2. SBPCHC, an unincorporated association, is the permittee as defined in SBMC § 28.80.020. The legislative program for Storefront Collective Dispensary Permits pursuant to Chapter 28.80 of the Santa Barbara Municipal Code only anticipates one permit for each dispensary. To consider each Management Member as having their own permit, independent of SBPCHC would necessarily violate the one dispensary per area rule specified in SBMC § 28.80.050.E.
3. Joseph Allen's status as applicant on the application for the Medical Marijuana Storefront Collective Dispensary Permit does not make him a permittee independent of SBPCHC.
4. The definition of Permittee found in SBMC § 28.80.020.F anticipates the issuance of a single Storefront Collective Dispensary Permit that authorizes each of the Management Members identified to the City by an Applicant to operate the Storefront Collective Dispensary as agents or officers of the Storefront Collective Dispensary.
5. The application presented to the Planning Commission on June 4, 2015, identifies SBPCHC as the unincorporated association that would operate the Storefront Collective Dispensary and fulfill the requirements of SBMC Chapter 28.80. (Bates stamp 000232).
6. SBPCHC stated that it would not transfer ownership of the Storefront Collective without complying with the provisions of SBMC § 28.80.130.B. The application originally submitted on September 4, 2014, and the application presented to the Planning Commission on June 4, 2015, stated, "*SBPCHC will not transfer ownership or control of our Storefront Collective Dispensary or attempt to transfer our Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this Chapter accompanied by the required transfer review application fee.*" (Bates stamp 000024 and 000247).
7. The application submitted on September 4, 2014, included statements, signed under the penalty of perjury, by Joseph Allen, Matt Armor, and Greg McGee that they have personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Joseph Allen (Bates stamp 000051).

8. The April 4, 2016, submittal of a revised Operations Plan dated March 29, 2016, made changes to the approved Operations Plan, including the change in entities, grow locations, and Management Members without complying with the provisions of SBMC § 28.80.130.B. This submittal was presented as changes to the Operations Plan required pursuant to Planning Commission Resolution No. 009-15 (Bates stamp 314). These changes were not presented as an application for an amendment of the Permit pursuant to SBMC § 28.80.130.B.
9. Taken together, the letter from Joseph Allen to Tony Boughman dated March 23, 2016, the April 6, 2016, email from Joseph Allen to Tony Boughman, and the April 14, 2016, email from Joseph Allen to Mary Bock (copied to Tony Boughman) constitute an attempt to transfer ownership or control of the Storefront Collective Dispensary in violation of SBMC § 28.80.130. The letter and the emails instruct City staff to ignore or marginalize Management Members Matt Armor and Greg McGee identified in the application presented to the Planning Commission.
10. Despite his acknowledgement of the manner of transferring control of the Storefront Collective Dispensary Permit in the original application submitted on September 4, 2014, and the application presented to the Planning Commission on June 4, 2015, Joseph Allen represented the changes that would ultimately be submitted on April 4, 2016, as part of “other changes and corrections” (Bates stamp 000315) and represented them as “very minor changes to the Operating Agreement” (000310) in response to plan check corrections issued by City staff instead of filing an application with the Community Development Department in accordance with all provisions of Chapter 28.80 and the required transfer review application fee.
11. Joseph Allen’s April 6, 2016, resignation from the SBPCHC as an Associate of the Collective and as Agent of Process represents a change to the approved Operations Plan without the required review and approval of the Staff Hearing Officer.
12. Matt Armor and Greg McGee, in signing the notarized statement in December 2016, that they are the Management Members and directing all future correspondence regarding the Storefront Collective Dispensary Permit to them, represents a change in control of the SBPCHC from Joseph Allen, Matt Armor, and Greg McGee to Matt Armor and Greg McGee without the required review and approval of the Staff Hearing Officer (Bates stamp 000466).

III. DECISION

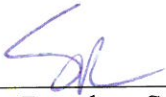
The letters and emails from Joseph Allen, a Management Member of SBPCHC, to City staff instructing City staff to not work with or provide information to other Management Members of SBPCHC constituted an attempt to transfer control of the SBPCHC Storefront Collective Dispensary Permit. The incorporation of Santa Barbara Patient’s Collective and Health Center, Inc. with different Management Members, and the presentation of the renamed corporate entity, Apothecary of Santa Barbara, Inc., as part of a revised submittal responding to Planning Commission Resolution No. 009-15 constituted an attempt to transfer the Storefront Collective Dispensary Permit to another person or entity in violation

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of SBMC § 28.80.130. The affidavit dated December 21, 2016, identifying Matt Armor and Greg McGee as controlling members of SBPCHC with the omission of Joseph Allen represents an attempt to transfer control of the Storefront Collective Dispensary Permit in violation of SBMC § 28.80.130.

Therefore, pursuant to SBMC § 28.80.130.D, I deem the Storefront Collective Dispensary Permit issued to SBPCHC revoked based upon the foregoing Findings of Fact and Conclusions of Law. This decision may be appealed to the Planning Commission within 10 calendar days of the date of this decision pursuant to SBMC § 28.80.110.A and SBMC § 28.05.020.B.

Executed on June 15, 2017



Susan Reardon, Staff Hearing Officer